

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 3256	DATE	8/19/2003
CASE TITLE	Julia Thompson vs. Ameriquest Mortgage Co.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [ use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Opinion and Order: Defendant's motion to dismiss (3-1) is granted. The status hearing set for 8/28/03 is stricken.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.	<div style="text-align: center;"> <p>U.S. DISTRICT COURT</p> <p>CLERK</p> <p>03 AUG 21 AM 8:19</p> <p>FILED FOR DOCKETING</p> <p>ED-7</p> </div>	number of notices	<div style="text-align: center;"> <p>Document Number</p> <p>8</p> </div>
<input type="checkbox"/>	No notices required.		AUG 21 2003 date docketed	
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.		<i>JH</i> docketing deputy initials	
<input type="checkbox"/>	Notified counsel by telephone.		8/19/2003 date mailed notice	
<input type="checkbox"/>	Docketing to mail notices.		GL	
<input checked="" type="checkbox"/>	Mail AO 450 form.		mailing deputy initials	
<input type="checkbox"/>	Copy to judge/magistrate judge.			
<div style="display: flex; justify-content: space-between;"> <span>GL</span> <span>courtroom deputy's initials</span> </div>		Date/time received in central Clerk's Office		

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Julia THOMPSON,

Plaintiff,

v.

AMERIQUEST MORTGAGE COMPANY,  
a Delaware Corporation,

Defendant.

No. 03 C 3256

**DOCKETED**  
AUG 21 2003

**MEMORANDUM OPINION & ORDER**

MARVIN E. ASPEN, District Judge.

Plaintiff Julia Thompson ("Thompson" or "Plaintiff") has filed a complaint before this Court alleging that a debt owed to Amerquest Mortgage Company ("Amerquest" or "Defendant") is invalid pursuant to the Truth-in-Lending Act ("TILA"), 15 U.S.C. §1601 and its implementing regulation, 12 C.F.R. §224 ("Regulation Z"). Presently before us is Defendant's motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). For the reasons set forth below, we grant Defendant's motion to dismiss.

**BACKGROUND**

On April 11, 2001, Plaintiff entered into a \$68,000 loan transaction (the "Mortgage") with Defendant to refinance her home. Pursuant to TILA, Plaintiff had the right to rescind the transaction within three days. According to Plaintiff, the Truth-in-Lending disclosure statement provided by Defendant did not accurately state all material terms of the transaction. Plaintiff contends that this omission resulted in an extension of Plaintiff's right to rescind to three years. Plaintiff subsequently defaulted on her mortgage payment. Defendant responded by filing an action to foreclose on the Mortgage in the Circuit Court of Cook County. On August 13, 2002, the Circuit Court entered a

Judgment of Foreclosure and Order of Sale (the “Judgment”), scheduling the sale for November 14, 2002. Plaintiff neither challenged allegations in the foreclosure complaint nor appealed the Judgment. Plaintiff also failed to redeem the property during the redemption period.

Plaintiff filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the Northern District of Illinois on November 13, 2002. The Bankruptcy Court denied Plaintiff's petition. On March 12, 2003, Plaintiff attempted to rescind the Mortgage by signing a “notice of cancellation” and faxing a copy to Defendant's counsel. Plaintiff then filed an Amended Chapter 13 Plan claiming the Mortgage was void because of her attempted rescission. Plaintiff also filed a complaint in the Bankruptcy Court for the Northern District requesting declaratory and injunctive relief as well as a modification of rescission procedures. The Bankruptcy Court rejected the Plaintiff's Amended Chapter 13 Plan and dismissed her complaint without prejudice on April 17, 2003.

On May 15, 2003, Plaintiff filed the instant complaint before this Court, alleging that the mortgage held by Defendant is void due to her rescission. Plaintiff asks this Court to: (1) declare that Plaintiff had a valid right to rescind the Mortgage and that the Mortgage is void; (2) enjoin Defendant from further acting to foreclose on her home; and (3) modify the repayment method provided for by TILA rescission procedures. Defendant filed a motion to dismiss the instant complaint on June 12, 2003 pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), arguing that this Court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine and, alternatively, that Plaintiff's claims are barred by the doctrine of *res judicata*.

## **DISCUSSION**

### **I. STANDARD OF REVIEW**

The purpose of a motion to dismiss under Rule 12(b)(1) is to decide the adequacy of the complaint, not the merits of the case. *See Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir.

1990). Federal Rule of Civil Procedure 12(b)(1) requires dismissal of claims over which the federal court lacks subject matter jurisdiction. Jurisdiction is the “power to decide” and must be conferred upon the federal court. *In re Chicago, Rock Island & Pacific R.R. Co.*, 794 F.2d 1182, 1188 (7th Cir. 1986). In reviewing a motion to dismiss for lack of subject matter jurisdiction, the Court may look beyond the complaint to other evidence submitted by the parties to determine whether subject matter jurisdiction exists. *See United Transp. Union v. Gateway Western Ry. Co.*, 78 F.3d 1208, 1210 (7th Cir. 1996). The plaintiff faced with a 12(b)(1) motion to dismiss bears the burden of establishing that the jurisdictional requirements have been met. *See Kontos v. United States Dept. of Labor*, 826 F.2d 573, 576 (7th Cir. 1987).

Under the *Rooker-Feldman* Doctrine, we “lack jurisdiction to engage in appellate review of state-court determinations.” *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 21, 107 S.Ct. 1519, 1531, 95 L.Ed.2d 1 (1987) (Brennan, J., concurring) (citing *Rooker v. Fidelity Trust Co.*, 263 U.S. 443, 44 S.Ct. 149, 68 L.Ed. 362 (1923)); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). Indeed, the United States Supreme Court has sole federal jurisdiction over such judgments. *See Feldman*, 460 U.S. at 482, 486, 103 S.Ct. at 1314, 1317; *see also Rooker*, 263 U.S. at 46, 44 S.Ct. at 150; *Landers Seed Co. v. Champaign Nat’l Bank*, 15 F.3d 729, 732 (7th Cir. 1994).

The *Rooker-Feldman* Doctrine further dictates that a district court may not entertain a claim that, while not raised in the state court proceeding, is “inextricably intertwined” with the state court judgment. *Feldman*, 460 U.S. at 483 n.16, 103 S.Ct. at 1316 n. 16; *see also Ritter*, 992 F.2d at 753. In examining whether a federal claim is “inextricably intertwined,” the crucial inquiry “is whether ‘the district court is in essence being called upon to review the state-court decision.’” *Ritter*, 992 F.2d at 754 (quoting *Feldman*, 460 U.S. at 483-484 n. 16, 103 S.Ct. at 1316 n. 16). To that end, the Seventh Circuit considers: (1) whether the plaintiff had a reasonable opportunity to raise the current claims in state court;

and (2) whether the state court judgment caused the injury of which the plaintiff complains. *See Schmitt v. Schmitt*, 324 F.3d 484, 486 (7th Cir. 2003). If the answer to both questions is in the affirmative, the *Rooker-Feldman* Doctrine applies, and the lower federal court is without subject matter jurisdiction. *See id.*

## II. ANALYSIS

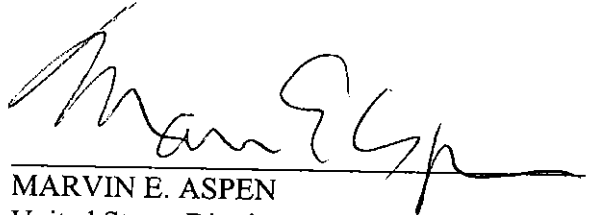
Defendant argues that Plaintiff's claims are inextricably intertwined with the Judgment of the Circuit Court. First, Plaintiff had a reasonable opportunity to assert her claims that she had a right to rescind the Mortgage and that the Mortgage is void. The facts on which Plaintiff relies to make her claims existed when Defendant filed its foreclosure action. However, Plaintiff inexplicably failed to raise these claims before the Circuit Court on in an appeal of the Judgment. We cannot hear Plaintiff's claims simply because she chose not to raise the issues before the State court.

Second, Plaintiff is trying to get relief in federal court from a State Circuit Court Judgment. Plaintiff alleges that Defendant's Truth-in-Lending Statement violated TILA, and asks this Court to declare her March 2002 rescission valid. She also requests an injunction to prevent further foreclosure proceedings on her home. In essence, Plaintiff's numerous past filings, as well as her present action, all endeavor to remedy one injury -- foreclosure on her home. This injury stems directly from the Circuit Court Judgment of Foreclosure. Implicit in the Circuit Court Judgment was that court's determination that the Mortgage was valid. Plaintiff's complaint asks us to draw a different conclusion than that reached by the Circuit Court. As a consequence, we are without subject matter jurisdiction to hear Plaintiff's claims pursuant to the *Rooker-Feldman* Doctrine.

## CONCLUSION

For the foregoing reasons, we grant Defendant's motion to dismiss under 12(b)(1).<sup>1</sup>

It is so ordered.

  
MARVIN E. ASPEN  
United States District Judge

Dated 8/19/03

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<sup>1</sup>Because we have dismissed the complaint under Rule 12(b)(1), we need not consider Defendant's alternative grounds for dismissal under Rule 12(b)(6).